Kang Yoon Mook Xavier v Insun Development Sdn Bhd

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24–516 OF 1994
ABDUL MALIK ISHAK J
25 JANUARY 1995

Contract *— Time of the essence — Sale and purchase of property — Contract specified date of completion of house — Late completion — Whether purchaser could rescind agreement and sue for damages — Whether developer must refund money paid — Whether purchaser could claim for liquidated damages before delivery of vacant possession — Contracts Act 1950 ss 56(1) & 65 — Housing Developers (Control and Licensing) Act 1966 s 24 — Housing Developers (Control and Licensing) Regulations 1982 Sch E*

Contract *— Construction of terms of contract — Contract in statutory form — Words in agreement clear and unambiguous — Principle in construing language of agreement similar as in construing statute — Housing Developers (Control and Licensing) Act 1966 s 24 — Housing Developers (Control and Licensing) Regulations 1982 Sch E*

Contract *— Damages — Sale and purchase of property — Late completion — Contract in statutory form — Liquidated damages clause in contract — Whether can claim for liquidated damages before delivery of vacant possession*

By a sale and purchase agreement ('the agreement') which was adopted from the standard sale and purchase agreement as found in Sch E of the Housing Developers (Control and Licensing) Regulations 1982, the plaintiff ('the purchaser') purchased a house from the defendant ('the developer'). The developer, however, failed to deliver vacant possession of the house to the purchaser within the stipulated time in the agreement. The purchaser sought to terminate the agreement by sending letters of termination to the developer. The purchaser then filed an originating summons and prayed, inter alia: (i) for a declaration that the agreement had been properly terminated; (ii) that the developer must refund the money that had been paid by the purchaser; and (iii) that the purchaser was entitled to liquidated damages at the rate of 10%pa of the purchase price from the date of the delivery of vacant possession until the date of the termination of the agreement, pursuant to cl 18(2) of the agreement. The developer conceded to prayers (i) and (ii), but contended that the liquidated damages as sought for should be rejected. It was argued that the right time for the purchaser to sue for liquidated damages would be when vacant possession was delivered, because it was only then that the sum to be paid could be ascertained and became due, and that the limitation period would only be activated when vacant possession was delivered.

Held, allowing the plaintiff's claim:

(1) The agreement, which was adopted from Sch E has a statutory flavour. In order to construe cl 18(2), the principles in construing statutes applied. Thus, one began by examining the language

employed therein and to ask what was its natural meaning, uninfluenced by other unnecessary considerations as derived from the previous state of law. A

(2) The language employed in cl 18(2) of the agreement was clear and unambiguous. Its natural meaning related to the right of the purchaser to rescind and to sue immediately for liquidated damages if the developer failed to deliver the house within 24 months from the date of the agreement. B

(3) As time was provided to be the essence of the agreement, the stipulated time period within which the house had to be delivered to the purchaser became an essential condition of the agreement. As the developer was in breach this condition, the purchaser was entitled to elect either to rescind the agreement and sue for damages by virtue of ss 56(1) and 65 of the Contracts Act 1950 or to treat the agreement as continuing and sue for damages. The purchaser in this case had rightly exercised his former option. He was entitled to terminate the agreement, obtain the refund of the money he had paid and post-rescissionary damages as envisaged under s 76 of the Contracts Act 1950. C D

[Bahasa Malaysia summary

Melalui suatu perjanjian jual beli ('perjanjian tersebut'), dalam bentuk perjanjian standard yang terdapat dalam Jad E Peraturan-Peraturan Pemaju Perumahan (Kawalan dan Pelesenan) 1982, plaintif ('pembeli') telah membeli sebuah rumah daripada defendan ('pemaju'). Walau bagaimanapun, pemaju tersebut gagal menghantarserah milikan kosong rumah itu kepada pembeli dalam tempoh masa yang telah ditetapkan dalam perjanjian tersebut. Pembeli cuba menamatkan perjanjian tersebut dengan menghantar dua pucuk surat penamatan kepada pemaju. Pembeli kemudiannya memfailkan saman pemula dan memohon, antara lain: (i) untuk suatu deklarasi bahawa perjanjian tersebut telah ditamatkan dengan wajar; (ii) bahawa pemaju mesti memulangkan wang yang telah dibayar oleh pembeli; dan (iii) bahawa pembeli berhak mendapatkan ganti rugi jumlah tertentu pada kadar 10% daripada harga beli setahun dari tarikh penghantarserahan milikan kosong sehingga tarikh penamatan perjanjian tersebut, mengikut fasal 18(2) perjanjian tersebut. Pemaju bersetuju terhadap permohonan (i) dan (ii), tetapi menyatakan bahawa ganti rugi jumlah tertentu yang dipohon itu patut ditolak. Adalah dihujahkan bahawa masa yang betul untuk pembeli menuntut ganti rugi jumlah tertentu ialah apabila milikan kosong dihantarserah, kerana itulah masanya apabila jumlah yang patut dibayar dapat ditentukan, dan tempoh had masa tindakan akan mula berjalan hanya apabila milikan kosong dihantarserahkan. E F G H I

Diputuskan, membenarkan tuntutan plaintif:

(1) Perjanjian tersebut, yang diambil dari Jad E mempunyai unsur statutori. Untuk mentafsir fasal 18(2), rukun pentafsiran statut

terpakai. Lantaran itu, pentafsiran dimulakan dengan mengkaji bahasa yang digunakan di dalamnya dan dengan menyoal apakah maksud aslinya, tanpa dipengaruhi oleh pertimbangan lain yang tidak perlu yang berasal daripada kedudukan undang-undang pada masa dahulu.

(2) Bahasa yang digunakan dalam fasal 18(2) perjanjian tersebut adalah jelas dan tidak taksa. Maksud aslinya menyatakan hak pembeli untuk membatalkan perjanjian dan untuk menuntut dengan serta-merta untuk ganti rugi jumlah tertentu jika pemaju gagal menghantarserah milikan kosong rumah itu dalam tempoh 24 bulan dari tarikh perjanjian tersebut.

(3) Oleh kerana masa menjadi asas perjanjian tersebut, tempoh masa yang ditetapkan supaya rumah tersebut harus dihantarserahkan kepada pembeli telah menjadi suatu syarat penting perjanjian. Oleh kerana pemaju memungkiri syarat ini, pembeli adalah berhak untuk memilih sama ada untuk membatalkan perjanjian tersebut dan menuntut ganti rugi menurut ss 56(1) dan 65 Akta Kontrak 1950 atau menyifatkan perjanjian itu sebagai berterusan dan menuntut ganti rugi. Pembeli dalam kes ini telah dengan wajarnya membuat pilihan pertama. Beliau adalah berhak menamatkan perjanjian tersebut, mendapat kembali wang yang telah dibayarnya dan ganti rugi selepas pembatalan menurut s 76 Akta Kontrak 1950.]

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No J–08–68–95.]

Notes

For cases on time being of the essence, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2272–2275.

For cases on construction of term of contracts, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1381–1430.

For cases on liquidated damages in contracts, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1467–1472.

Cases referred to

Azali bin Bakar v Insun Development Sdn Bhd [1994] 3 AMR 51:2709 (distd)

Bank of England v Vagliano Brothers [1891] AC 107; [1891–4] All ER Rep 93 (folld)

Choo Yin Loo v Visuvalingam Phillay (1930) 7 FMSLR 135 (folld)

Chye Fook & Anor v Teh Teng Seng Realty Sdn Bhd [1989] 1 MLJ 308 (refd)

Eng Mee Yong & Ors v Letchumanan [1979] 2 MLJ 212 (refd)

Linggi Plantations Ltd v Jagatheesan [1972] 1 MLJ 89 (refd)

Loh Wai Lian v SEA Housing Corp Sdn Bhd [1987] 2 MLJ 1 (distd)

Lombard North Central Plc v Butterworth [1987] QB 527; [1987] 1 All ER 267; [1987] 2 WLR 7 (folld)

Malaysia National Insurance Sdn Bhd v Abdul Aziz bin Mohamed Daud [1979] 2 MLJ 29 (refd) A
Tan Yang Long & Anor v Newacres Sdn Bhd [1992] 1 MLJ 289 (follld)

Legislation referred to

Contracts Act 1950 ss 56(1), 65, 76 B
Housing Developers (Control and Licensing) Act 1966 s 24
Housing Developers (Control and Licensing) Regulations 1970 cl 17
Housing Developers (Control and Licensing) Regulations 1982 cl 18(2), Sch E
Limitation Act 1953 s 6(1)(a)
Rules of the High Court 1980 O 28 r 4 C

Adi Radlan bin Abdul Rahman (*Mak, Ng, Shao & Kee*) for the plaintiff.
S Thomas (*Rashid & Lee*) for the defendant.

Abdul Malik Ishak J: By a sale and purchase agreement dated 19 August 1986 ('the S & P agreement'), the plaintiff agreed to purchase from the defendant, a housing developer licensed under the Housing Developers (Control and Licensing) Act 1966 ('the Act'), a piece of land on lot No PTD 36430, Mukim Tebrau together with a single-storey low cost house ('the said house') for RM27,680 (exh XKYM1 in encl 2). On 4 July 1986, the plaintiff paid RM2,768 representing 10% of the purchase price, and the balance was payable on an instalment basis as envisaged in cl 4 of the S & P agreement (see the receipt for such payment vide exh XKYM2 in encl 2). By cl 18(1) of the S & P agreement, the defendant agreed to complete the said house and deliver vacant possession to the plaintiff within 24 calendar months from the date of the S & P agreement, and this would be on 18 August 1988. Further, by cl 18(2) of the S & P agreement, the defendant agreed to pay liquidated damages at the rate of 10%pa of the purchase price to be calculated on a day to day basis in the event the defendant failed to deliver vacant possession of the said house within the time stipulated in cl 18(1) thereof. In total disregard and in breach of the S & P agreement, the defendant failed to complete and deliver vacant possession of the said house to the plaintiff and this state of affairs prevailed at the time the plaintiff filed his originating summons. It is pertinent to point out that by cl 7 of the S & P agreement, time was said to be the essence of the contract. Pushed to a corner, the plaintiff had no choice but to terminate the S & P agreement, and this he did by sending a notice dated 20 May 1994 to the defendant's address as reflected in the S & P agreement and by way of AR registered post (see the letter of termination exhibited as XKYM3 in encl 2). By cl 25(1)(a) of the S & P agreement, this notice was deemed to be sufficiently served and received by the defendant. To be doubly sure, the plaintiff sent a second notice dated 2 June 1994 in the same fashion to the defendant (see exh XKYM4 in encl 2). Both these two notices were sent by the plaintiff's solicitors direct to the defendant. Through their solicitors, the defendant respondent by letter dated 14 June 1994 (exh XKYM5) acknowledging receipt of the second notice and requested for time as they were looking into the matter.

A On these facts, the plaintiff sought for the following prayers (encl 3):

1 suatu pengisytiharan bahawa defendan telah memungkiri terma-terma sebuah perjanjian jual beli bertarikh 19 Ogos 1986 ('perjanjian jual beli tersebut') yang diperuntukkan oleh Housing Developers (Control and Licensing) Regulations 1982 dan bahawa plaintif telah dengan wajarnya menamatkan perjanjian jual beli tersebut pada 20 Mei 1994 atau pada mana-mana tarikh yang mahkamah yang mulia berpendapat patut dan sesuai atau dalam alternatifnya suatu deklarasi bahawa perjanjian jual beli tersebut ditamatkan oleh kerana kemungkiran kontrak oleh defendan;

2 bahawa plaintif mendapatkan kembali bayaran sejumlah RM2,768 yang merupakan 10% daripada harga pembelian yang dibayar oleh plaintif kepada defendan pada 4 Julai 1986;

3 bahawa defendan membayar kepada plaintif ganti rugi jumlah tertentu yang akan dikira pada kadar 10% setahun ke atas harga pembelian sebanyak RM27,680 yang dikira dari hari ke hari dari tarikh yang ditetapkan oleh perjanjian jual beli tersebut untuk penyerahan milikan kosong, iaitu dari 18 Ogos 1988 sehingga tarikh penamatan perjanjian jual beli tersebut;

4 ganti rugi selanjutnya dan/atau ganti rugi lebih serius;

5 selanjutnya atau dalam alternatif, ganti rugi bagi kemungkiran kontrak;

6 faedah pada kadar 8% setahun ke atas jumlah penghakiman yang dihakimi dari tarikh saman ini sehingga tarikh penjelasan sepenuhnya;

7 kos di atas dan kos sampingan berhubung permohonan ini dibayar oleh defendan kepada plaintif; dan

8 perintah-perintah lain atau perintah selanjutnya diberikan sepertimana mahkamah yang mulia fikir patut dan suai-manfaat.

It is necessary to make a few observations. The S & P agreement entered into between the parties is a verbatim reproduction of the standard S & P agreement as found in Sch E of the Housing Developers (Control and Licensing) Regulations 1982, made pursuant to s 24 of the Act. As stated earlier, the defendant, duly licensed under the Act, has no choice but to adopt the standard S & P agreement as set out in Sch E of the Housing Developers (Control and Licensing) Regulations 1982. This means that there is a statutory flavour to the S & P agreement entered into between the parties.

Since time is the essence of the S & P agreement, it is appropriate, at this juncture, to refer to s 56(1) of the Contracts Act 1950 which enacts, inter alia, that where time is the essence of the contract, failure to perform within the stipulated time will entitle the injured party to avoid the contract. But the injured party has the right to elect not to avoid the contract but to insist on performance and sue for damages. Lord Hailsham pointed out in *Linggi Plantations Ltd v Jagatheesan* [1972] 1 MLJ 89 that s 56(1) of the Contracts Act 1950 should be read closely with s 65 of the Contracts Act 1950 which provides for the consequences of rescission of a voidable contract. Lord Diplock in *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212, in considering the effect of the failure to perform within a specified date, said succinctly [at p 218]:

> ... Time being of the essence of the provisions in the sale agreement for payment of the purchase price, the failure of the caveator to pay on the due date was a breach of condition which the caveatees were entitled to elect to treat as bringing the contract to an end ...

9 *Halsbury's Laws of England* (4th Ed) para 538 at p 370 sets out the general rule that:

> Where one party to a contract has committed a serious breach by a defective performance or by repudiating his obligations under the contract, the innocent party will have the right to rescind the contract; that is to treat himself as discharged from the obligation to tender further performance, and sue for damages for any loss he may have suffered as a result of the breach. The breach itself does not terminate the contract, the innocent party having the right to elect to treat the contract as continuing or to terminate it by rescission.

Mustill LJ in *Lombard North Central Plc v Butterworth* [1987] QB 527 at p 535; [1957] 1 All ER 267 at pp 271–272; [1987] 2 WLR 7 at p 13, in the same vein said this:

> A stipulation that time is of the essence, in relation to a particular contractual term, denotes that timely performance is a condition of the contract. The consequence is that delay in performance is treated as going to the root of the contract, without regard to the magnitude of the breach ... It follows that where a promisor fails to give timely performance of an obligation in respect of which time is expressly stated to be of the essence, the injured party may elect to terminate and recover damages in respect of the promisor's outstanding obligations, without regard to the magnitude of the breach.

Applying the above principles to the present case, as time was provided to be of the essence of the S & P agreement, the stipulated time period within which the said house had to be delivered to the plaintiff became an essential condition of the S & P agreement. The failure of the defendant to fulfil this condition would entitle the plaintiff to have an option of treating the S & P agreement either: (a) as having been repudiated and sue for damages; or (b) as still continuing. The plaintiff rightly exercised his option to proceed under (a).

In my judgment, the plaintiff is entitled to terminate the S & P agreement and obtain the 10% of the purchase price; this course of action would place the plaintiff in a position like as though he did not enter into the S & P agreement at all. By virtue of s 56 of the Contracts Act 1950, the S & P agreement is said to be voidable at the option of the plaintiff (promisee), if the intention of the parties was to make time the essence of the S & P agreement, but if it were otherwise, the plaintiff (promisee) is entitled to compensation from the defendant (promisor) for any loss occasioned to the plaintiff by the defendant's failure to deliver the said house on or before 18 August 1988. In my judgment, time was the essence of the contract here, and as such, the contract between the parties was voidable. Since on the due date, that was on 18 August 1988, there was a failure on the defendant's part to deliver the said house, the plaintiff in law had the option of either to continue with the contract or to rescind it (see *Chye Fook & Anor v Teh Teng Seng Realty Sdn Bhd* [1989] 1 MLJ 308 and *Tan Yang Long & Anor v Newacres Sdn Bhd* [1992] 1 MLJ 289). Faced

with a formidable obstacle, counsel for the defendant conceded that prayers 1 and 2 set out above should rightly be given to the plaintiff, and I so ordered accordingly. In addition to that, an order for post-rescissionary damages in favour of the plaintiff was also made, and these should be assessed by the senior assistant registrar by virtue of O 28 r 4 of the Rules of the High Court 1980 (see also *Tan Yang Long*'s case). Incidentally, the post-rescissionary damages (prayer 4 of encl 3) relate to the compensation which the plaintiff sustained through the non-fulfilment of the contract as envisaged under s 76 of the Contracts Act 1950.

Next, Ms S Thomas for the defendant argued strenuously that the liquidated damages sought for in prayer 3 should be rejected principally because of the passages which appeared in the Privy Council's decision of *Loh Wai Lian v SEA Housing Corp Sdn Bhd* [1987] 2 MLJ 1, especially at p 4 where Lord Oliver of Aylmerton said:

> ... This appeal raises no point of principle but simply a question of what is the true construction of the contract in which the parties entered. In their Lordships' judgment, the only sensible construction of cl 17 is, as Mr Kidwell contended, that it imposes an obligation to pay, in substitution for any other right to damages which the purchaser might otherwise have, a single sum to be calculated and ascertained at a particular date and that until that sum has been ascertained it does not become due and cannot be sued for.

She argued further that though the Privy Council in *Loh Wai Lian*'s case considered cl 17 of the Housing Developers (Control and Licensing) Regulations 1970, yet it was akin to cl 18(2) of the Housing Developers (Control and Licensing) Regulations 1982 and, consequently, the best time for the plaintiff to sue for liquidated damages would be when vacant possession was delivered, and further, the limitation period under s 6(1)(a) of the Limitation Act 1953 would only be activated when vacant possession was finally delivered to the plaintiff. She cited and relied on *Azali bin Bakar v Insun Development Sdn Bhd* [1994] 3 AMR 5:2709.

Encik Adi Radlan bin Abdul Rahman argued forcefully and meticulously on behalf of the plaintiff and submitted that s 76 of the Contracts Act 1950 would allow the plaintiff to claim for liquidated damages forthwith upon the failure of the defendant to deliver vacant possession of the said house within 24 calendar months from the date of the S & P agreement.

Abdul Malek J in *Chye Fook*'s case, put the issue of the right of the injured party to claim for liquidated damages to rest, once and for all, in the following words:

> At this stage of the proceedings, this court was not asked to determine whether the rescission would result in the plaintiffs not being able to receive the liquidated damages but in passing I would say that, as provided by s 76 of the Contracts Act 1950, a party who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract. I had in fact made it clear in my ruling that the plaintiffs' entitlement to liquidated damages if the developer failed to complete within 24 months did not in any way take away the rights of the purchaser to rescind the contract.

Mahadev Shanker J (now a member of the Court of Appeal), in *Tan Yang Long*'s case, followed *Chye Fook*'s case and ruled that liquidated damages ought to be given to the plaintiffs there.

Two things need to be highlighted here. First, in *Loh Wai Lian*'s case, the shophouse was delivered on 7 November 1977, long after the due date (that was on 18 September 1975). In the instant case before me, there was no delivery of the said house on the due date just like *Tan Yang Long*'s case. In fact, the facts in *Tan Yang Long*'s case are on all fours with the present case before me. Secondly, the proposition that the purchaser must wait until vacant possession is delivered before he can sue for liquidated damages because only on that day the single sum to be paid can be ascertained and become due and the purchaser can sue, as enunciated by *Loh Wai Lian*'s case, and applied and accepted in *Azali bin Bakar*'s case, with respect, in my view should be accepted cautiously. Raja Azlan Shah FJ (as His Majesty then was) speaking for the Federal Court in *Malaysia National Insurance Sdn Bhd v Abdul Aziz bin Mohamed Daud* [1979] 2 MLJ 29 [at p 32] laid down a stoic principle, viz:

> However I would once again emphasize what has so often been said before, that precedents are not to be slavishly followed; a case may be followed only for its strict ratio decidendi.

It is now trite law that where a party to a contract refuses altogether to perform or is disabled from performing his part of it, the other side has the right to rescind it (*Choo Yin Loo v Visuvalingam Phillay* (1930) 7 FMSLR 135). Rescission of contract with regard to repudiatory breach is not meant to be rescission ab initio. In *Chye Fook*'s case, for instance, the purchaser could rescind and claim for liquidated damages forthwith.

To adopt the proposition in *Loh Wai Lian*'s case would cause hardship to the plaintiff in the present case for two potent reasons. First, if the plaintiff is supposed to wait, notwithstanding cl 18(2) of the S & P agreement, for the said house to be built and delivered to him before he can sue the defendant for liquidated damages, then at the end of the day, the plaintiff would be put in great jeopardy because the limitation period might set in. Secondly, if the plaintiff cannot sue the defendant for liquidated damages upon the defendant's failure to comply with cl 18(2) of the S & P agreement, then it would be tantamount to the court allowing eternal procrastination of the defendant's part in building the plaintiff's low cost house with no possible and immediate form of remedy to the plaintiff. I am told that the defendant abandoned the housing project on 1 January 1992, leaving confused and frustrated buyers high and dry for an indefinite period of time. Later, MBF Finance became a shareholder of the defendant's company and somehow, by a stroke of fortune managed to float the defendant's company, thereby saving it from being wound up. Alone, MBF Finance cannot revive the abandoned housing project. Fortunately, the Malaysian Government, sensitive to the needs of the rakyat, established the now famous Tabong Pemulihan Projek Terbengkalai ('TPPT'), and with the moneys channelled through Bank Negara, MBF Finance revived the housing project and finally surrendered the low cost houses to the disgruntled buyers who opted to continue with the contract. Two questions

come to the forefront here: (i) should the plaintiff wait and not rescind the S & P agreement hoping that the kind Malaysian Government would come to his assistance by reviving the housing project through TPPT?; and (ii) must the plaintiff wait that long after rescinding the S & P agreement (perhaps till doomsday) to sue for the liquidated damages? Surely it is not the intention of the Minister in making the Housing Developers (Control and Licensing) Regulations 1982 (wherein the standard sale and purchase agreement (land and building) was incorporated as Sch E which forms the S & P agreement of the present case) to deprive the purchaser of his immediate right to rescind and sue for liquidated damages upon the failure of the developer to deliver vacant possession on the stipulated date! In making the Housing Developers (Control and Licensing) Regulations 1982, the Minister must have thought of the plight of the poor prospective house buyers who are at the mercy of the cunning and rich developers. The language employed in cl 18(2) of the S & P agreement is clear and unambiguous, and its natural meaning relates to the right of the purchaser plaintiff to rescind and to sue immediately for liquidated damages if the recalcitrant developer fails to deliver the said house within 24 months from the date of the S & P agreement. In construing cl 18(2) of the S & P agreement, one must examine the language employed therein, and one must not be influenced by other unnecessary considerations. As Lord Herschell said in *Bank of England v Vagliano Brothers* [1891] AC 107 at pp 144–145; [1891–4] All ER 93 at p 113 :

> ... I think the proper course is, in the first instance, to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated.

Though Lord Hershell was dealing with the language of the statute in that case, his germane observations apply equally in construing the words of the standard S & P agreement as found in Sch E of the Housing Developers (Control and Licensing) Regulations 1982.

For the reasons adumbrated above, I ordered that the defendant shall pay immediately to the plaintiff liquidated damages calculated from day to day at the rate of 10%pa of the purchase price of RM27,680 commencing from 18 August 1988 (the date of vacant possession) to 5 June 1994 (the date of termination of the S & P agreement). Costs should rightly go to the plaintiff.

Order accordingly.

Reported by Isabel Liong